

Domestic Abuse (Scotland) Act 2018

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Background

“In my personal view, there are strong arguments in favour of creating a new bespoke criminal offence of domestic abuse

I believe that the creation of a specific offence would:

- reflect the true experience of victims of long term abuse during which they are, on repeated occasions, subjected to multiple forms of abuse, including non violent abuse;*
- acknowledge the true impact and consequences of all types of abusive behaviours including non violent tactics of control and abuse;*
- acknowledge the role of coercive control;*
- raise awareness of the offence and the impact on victims;*
- provide clarity to the public and to law enforcement; and*
- declare without ambiguity that this conduct is not acceptable and will be met with the full force of the law including the imposition of criminal sanctions.”*

Lesley Thomson QC – Solicitor General – 9 May 2014 – COPFS Domestic Abuse Conference.

2015 Consultation Equally Safe: Reforming the law to address domestic abuse and sexual offences

- Sought views on whether the creation of a specific offence concerning domestic abuse would improve how the justice system responds to this crime.
- Also sought views on statutory aggravation that offence involved abuse of a partner or ex-partner.
- Majority of respondents (93%) of the view that a specific offence would improve ability of justice system to address domestic abuse
- Particular concern was that existing law did not recognise coercive and controlling behaviours that are often a central part of the abuse.

Domestic Abuse Aggravation

Abusive Behaviour and Sexual Harm (Scotland) Act 2016

(1) This subsection applies where it is—

(a) libelled in an indictment or specified in a complaint that an offence is aggravated by involving abuse of the partner or ex-partner of the person committing it, and

(b) proved that the offence is so aggravated.

(2) An offence is aggravated as described in subsection (1)(a) if in committing the offence—

(a) the person intends to cause the partner or ex-partner to suffer physical or psychological harm, or

(b) in the case only of an offence committed against the partner or ex-partner, the person is reckless as to causing the partner or ex-partner to suffer physical or psychological harm.

(7) In this section—

“cause” includes contribute to causing (and “causing” is to be construed accordingly),

“psychological harm” includes fear, alarm or distress.

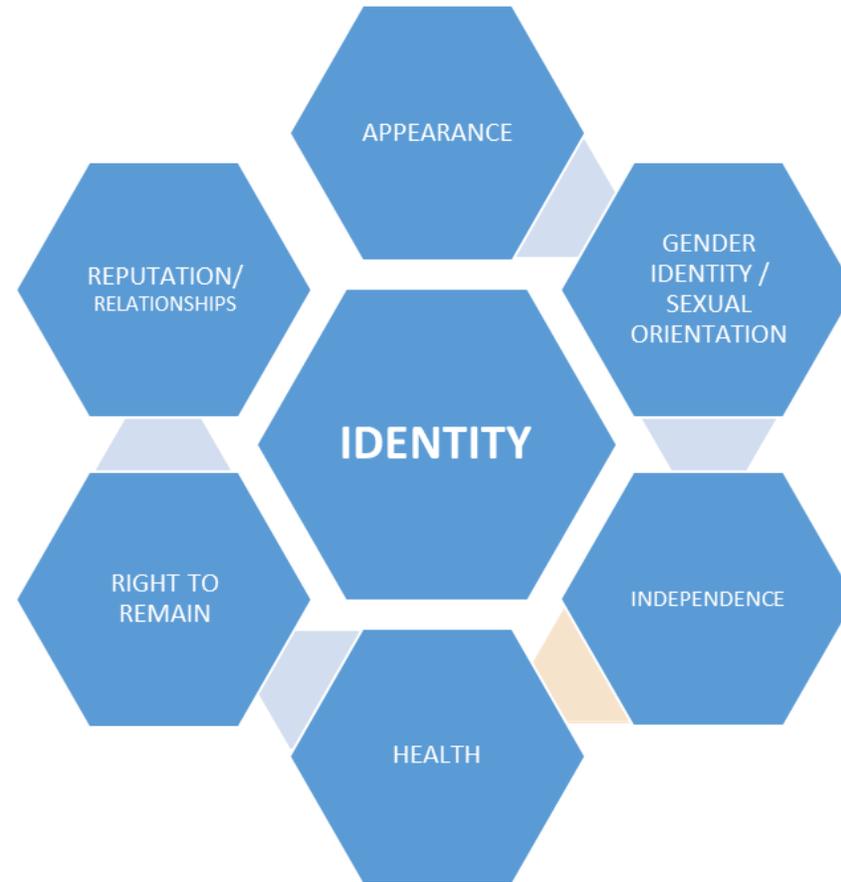
COPFS Coercive and Controlling Behaviour Working Group

- Group's remit was to consider how the criminal law could address coercive and controlling behaviours and what gaps there may be in current legislation.
- Representation from Police Scotland, Judicial Institute, Scottish Government and 3rd sector groups working with survivors of domestic abuse, including Scottish Women's Aid, ASSIST, AMIS, LGBT Youth Scotland
- Group also sought to try to understand and enumerate the different forms that such behaviour could take

Examples of coercive and controlling behaviour

- Exhaustion
- Enforcing trivial demands
- Isolation
- Breach of trust
- Threats
- Sexual abuse
- Economic abuse
- Humiliation/degradation
- Using children
- 'Gaslighting'

Coercive control attacks the victim's sense of self.



Serious Crime Act 2015

Section **76 Controlling or coercive behaviour in an intimate or family relationship**

(1) A person (A) commits an offence if—

(a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,

(b) at the time of the behaviour, A and B are personally connected,

(c) the behaviour has a serious effect on B, and

(d) A knows or ought to know that the behaviour will have a serious effect on B.

Offence of 'abuse of a partner or ex-partner'

- Criminalises a 'course of behaviour that is abusive of a partner or ex-partner'
- Does not seek to draw distinction between 'coercive and controlling behaviour' and other forms of abuse.
- Recognises that a 'course of abusive behaviour' can comprise both physical and psychological abuse. Often with one reinforcing the effects of the other.

Three conditions which require to be met for the offence to be committed

Condition one:

Person A engages in a course of behaviour which is abusive of A's partner or ex-partner ("B")

Condition two:

A reasonable person would consider that the course of behaviour would be likely to cause B to suffer physical or psychological harm

Condition three:

Person A either intends by the course of behaviour to cause B to suffer physical or psychological harm, or else is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

An illustrative definition of 'abusive behaviour'

By reference to the **effect** that the behaviour has on the victim:

(2) Behaviour which is abusive of B includes (in particular) ...

(a) Behaviour directed at B that is violent, threatening or intimidating.

(b) behaviour directed at B, at a child of B or at another person that either—

(i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or

(ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of—

(a) making B dependent on, or subordinate to, A,

(b) isolating B from friends, relatives or other sources of support,

(c) controlling, regulating or monitoring B's day-to-day activities,

(d) depriving B of, or restricting B's, freedom of action,

(e) frightening, humiliating, degrading or punishing B.

Aggravation concerning children

Applies where the perpetrator:

- Directs behaviour at a child
- Makes use of a child in directing behaviour at the victim

And

- Where a child sees, hears or is present during an incident of behaviour that the perpetrator directs at the victim as part of the course of abusive behaviour; or
- A reasonable person would consider the course of behaviour or an incident forming part of that course of behaviour, to be likely to adversely affect a child usually residing either with the victim or perpetrator

Reforms to criminal procedure in domestic abuse cases

- Restriction on bail in solemn cases
- Prohibition on personal precognition of complainer
- Prohibition on personal conduct of own defence
- Special measures for vulnerable witnesses
- Presentation of certain expert evidence
- Victim safety in relation to sentencing
- Consideration of non-harassment order

Implementation

- Act came into effect on 1 April
- Police training underway – 14,000 officers and staff to receive face-to-face training
- Lord President has also committed to ensure that all members of the judiciary will be trained on the Act
- Funding to Scottish Women's Aid for delivery of training throughout Scotland on coercion and control to local women's aid groups.
- Public awareness campaign launched to coincide with the Act coming into effect